

## **Public-Private Competitions for the Federal Government's Commercial Activities**

The public-private competition program governed by OMB's Circular A-76 is one of the most controversial programs in the federal government today. It has been criticized for not saving money, for reducing the quality of services, for being difficult to administer, and for being unfair to private competitors. The CNA Corporation has been examining this program for many years. We have addressed these and other issues, and have made recommendations concerning the program. Below, I provide our assessment of the program and proposals for improving it.

### **Principle of competition should guide A-76**

This is a program that has few philosophical advocates. Some argue that we should outsource all work that is not inherently governmental; others argue that we should keep all such work in-house. Virtually no one seems to endorse, on principle, direct competition between public and private organizations.

What then are the principles that would justify such a program? Here are three:

- For most support activities, we shouldn't start with a presumption that service provision belongs in either the public or the private sector. Most services fall into a gray area, where you cannot *a priori* decide whether it is better to do the work in-house or have it done outside. Because most services are not inherently governmental and there are commercial options, most services can be done by the private sector. But simply assigning a function to the private sector could increase costs associated with a given level of performance. The A-76 program provides a mechanism to evaluate alternative organization structures. It allows for either solution to be right.
- It should be the government's policy that all providers of services to the government, whether they are public or private providers, should be able to demonstrate that they provide the best value to the government. The A-76 program provides a mechanism to evaluate the incumbent provider against alternative providers, both public and private.
- Having organizations compete for government work is good for the government. If we allowed only private firms (or only public organizations) to compete for providing the service, we would be artificially limiting the competition.

This should be seen as a competition program and not an outsourcing program. We should do these competitions because they are part of good government, not because they are good business. Since the government alone provides the final services, such as national defense, competition can only be used for intermediate services, which are the types of services covered by A-76.

### **These competitions save money**

The evidence is overwhelming that public-private competitions have saved money. The only argument is how much is saved. In the 1980s, over 2,000 competitions saved an average of 30 percent; since 1995, several hundred competitions have saved, on average, over 40 percent. Some of the increase in savings reflects changes in cost comparison rules, but most of the increase reflects more intense competitions. Roughly half of the winners are in-house government teams.

We also know characteristics of competitions that produce bigger savings. Competitions for large activities produce a higher percentage of savings than competitions for smaller activities. Competitions that attract many bidders produce greater savings than competitions that attract only a few bidders. Competitions for activities with a large number of military workers produce greater savings than competitions for activities with few military personnel.

These are long-term savings. Detailed follow-up studies of private winners show that these savings persist after adjustment for regional increases in wages and changes in scope. Other analysis shows that recompetitions in the Army and Air Force produce additional savings. In one study, we found that aircraft maintenance contracts produced lower maintenance hours per flying hour that persisted 10 years after the initial competition. These are not one-time savings to the government.

There is no evidence that there are fewer opportunities for savings today than in the past. There is a long-term trend of newer competitions producing more savings than the earlier competitions. Within the Defense Department, there is no evidence that the drawdown removed the potential for savings. The budgets peaked in 1987 and 1988. Yet the savings continued to increase. We find that expansions and contractions have limited impact on the savings. In fact, GSA had over 30 percent savings in the 1980s at a time when its budget and workforce were shrinking. Also, much of the savings in state and local competitions came when budgets (revenues) were flat and the costs of services were expanding.

There is no evidence that recent improvements in DoD efficiency reduced savings. It is probably true that the Defense Department improved its efficiency in the last 10 years, but the private sector appears to have improved its efficiency even more. The proper benchmark for the competitions is what can be achieved today. And relative to that, costs of government services can be much less.

Performance has not been degraded. Customers report satisfactory service years after a competition. The least satisfied are the contracting officers, particularly in the first year of a contract. Aircraft maintained by contractors for the military retain high availability, even as the aircraft age.

### **But the program still has problems**

Without doubt, these public-private competitions have problems. Here are a few:

- The competition process is too long. Average time is over 2 years. This can be very disruptive, in part because permanent workers leave and are either not replaced or are replaced with temporary workers. Services degrade even before the winner is selected.
- Large number of cancellations. Of all the announced competitions in the Navy from 1995 to 1999, half were canceled by June of 2000. In other parts of DoD, one-quarter were canceled. Cancellations are often decided at fairly low levels in the organization and often after the government and private bidders have incurred considerable expenses.
- Poor follow-on tracking, particularly of in-house winners. There is little or no tracking of costs and performance of in-house winners. Even performance and costs of contractors are unevenly maintained. This results in poor oversight of existing MEOs and contractors, and in limited lessons learned to improve future competitions.
- Few competitors. We still have competitions with no bidders, which suggests that the PWS is structured to give little likelihood of an outside win or little likelihood for profit.
- Perceived bias in the process. The most difficult part of the process is establishing in-house bids that are comparable to private bids. Those who are responsible for verifying comparability, responsiveness of the in-house proposal, and the eventual winner are often seen as being too close to those who are representing the in-house bid.
- Transition periods are often long and cause disruption of services.

### **We have to better manage the competitions**

Many of these problems can be better managed or even eliminated with a reasonable set of practices. The problems are frequently not the result of current laws and regulations. Here are a few suggestions:

- Have an industry forum before issuing an RFP to get inputs on industry standards. Distribute draft RFPs for comment.
- Conduct oral presentations and advisory downselects. The downselects avoid having clearly unqualified companies spend time and money on fruitless efforts.

- Require refresher training on ethics and procurement integrity. All participants must understand what is appropriate behavior and communication between the in-house bidders and other government participants.
- Establish MOUs for in-house winners. This should be equivalent to having a contract with a private firm.
- Use a centralized management team to conduct A-76 competitions. This could be very effective if the team works together with the local functional personnel. This allows competitions to be conducted by people with experience in A-76 while incorporating the unique aspects of a specific location and activity. Centralized management teams also provide for a study team that is more autonomous and has less of a vested interest in the MEO winning; their motivation is to run a good competition.
- Manage workforce attrition. This includes keeping military personnel (when applicable) in place until the contract starts and managing civilian attrition to hold some of them in place until contracts start without jeopardizing their ability to obtain other government jobs.
- Let the organizations keep a percentage of the savings.
- Develop a cost and tracking system early. This should be part of the contract or MOU of in-house winners.
- Recompete if the in-house team fails to meet contract performance. There are cases where contractors are terminated for lack of performance. There is either another competition or the activity is administratively brought back in house. Regulations allow this for in-house failures to perform. Yet, to our knowledge, there has been no case where in-house problems were handled in a similar way.

A key ingredient to a successful competition is the attitude and commitment of those conducting it. If an organization is holding a competition because it is told to do it, it will be a half-hearted attempt that could easily result in an eventual cancellation. If the competition is held with the goal of finding out if the services could be provided at lower cost to the government, it will in fact produce a reasonable answer, most likely with savings, not necessarily outsourced, and will be done in a reasonable time.

### **Changes in policies and laws would further improve process**

There are several changes in the regulations and laws that would improve the process. Here are a few:

- Reduce the cost advantage to five percent. We shouldn't make changes for small differences in possibly inexact numbers, but ten percent is arbitrary. With an increased focus on best value contracting, we should reduce the cost advantage. The truth is that the incumbent has an advantage by being the most knowledgeable of the job, and the requirements to perform it. Additional advantages are inappropriate.

- Separation pay should be improved. There should be generous separation packages to affected workers and relaxed rules on reentry into the federal workforce. A core staff should receive special compensation for seeing the activity through a transition.
- Award fees for in-house winners. In-house teams should be allowed to earn award fees if they are being offered to private firms.
- Cancellation authority needs to be established. We need to clarify who has authority to cancel competitions. It should not be vested in any line managers for whom the in-house organization reports.
- Allow the competition process to help determine how to combine functions into contracts. Don't decide *a priori* which activities should be competed singularly or jointly with other functions in a competition. When considering whether to combine functions and localities, adopt an "any or all" combinatorial auction to get the right packaging. Competitors could bid on individual or multiple functions within a multifunction competition.